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FM SECSTATE WASHDC

TO AMEMBASSY CAIRO IMMEDIATE

C O N F I D E N T I A L STATE 081680

E.O. 11652: GDS

TAGS: PFOR, EG, IS

SUBJECT: PRIVILEGES AND IMMUNITIES FOR SFM PERSONNEL

REFS: (A) CAIRO 4165, (B) STATE 74482, (C) CAIRO 3874,
(D) STATE 46990, (E) CAIRO 4456

1. ASSUMING IBRASHI'S SUPERIORS ACCEPT HIS RECOMMENDATIONS
(REF A PARA 4), ONLY OUTSTANDING ISSUE (OTHER THAN MINOR
PROBLEM DESCRIBED PARA 5 BELOW) IS REVISION OF ARTICLES
4 AND 9 OF THE EGYPTIAN DRAFT (REF B). YOU SHOULD PROPOSE
TEXTS IN PARA 2 BELOW AS COMPROMISE RESOLUTION OF OUR
PROBLEMS ON IMMUNITIES.

2. QUOTE. PROPOSED ARTICLE FOUR. PURSUANT TO PARAGRAPH
6 OF THE ABOVE U.S. PROPOSAL, MEMBERS OF THE U.S.C.P. SHALL
BE IMMUNE FROM THE CRIMINAL AND CIVIL JURISDICTION OF THE
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ARAB REPUBLIC OF EGYPT. TO ASSURE THAT TO THE GREATEST

EXTENT POSSIBLE NO INJUSTICES SHALL BE DONE BECAUSE OF THIS IMMUNITY, THE GOVERNMENT OF THE UNITED STATES ADVISES AS FOLLOWS:

(A) ALL MEMBERS OF THE U.S.C.P. HAVE UNDERTAKEN TO CARRY THIRD PARTY LIABILITY INSURANCE IN AN AMOUNT NOT LESS THAN THE MINIMUM REQUIRED BY THE ARAB REPUBLIC OF EGYPT FOR

ORGANIZATIONS NOT REGISTERED WITH THE EGYPTIAN INSURANCE CO.;

(B) THE SECRETARY OF STATE SHALL SYMPATHETICALLY CONSIDER, IN ACCORDANCE WITH RELEVANT PROVISIONS OF U.S. LAW, THE PAYMENT OF CLAIMS PRESENTED BY THE GOVERNMENT OF THE ARAB REPUBLIC OF EGYPT FOR PERSONAL OR PROPERTY DAMAGE TO ANY OF ITS NATIONALS, ARISING OUT OF ACTIONS OF THE MEMBERS OF THE U.S.C.P. AND NOT ADEQUATELY COMPENSATED BY THE LIABILITY INSURANCE POLICIES MENTIONED ABOVE;

(C) THE GOVERNMENT OF THE UNITED STATES SHALL SYMPATHETICALLY CONSIDER REQUESTS BY THE GOVERNMENT OF THE ARAB REPUBLIC OF EGYPT IN PARTICULAR CASES TO WAIVE THE IMMUNITY GRANTED BY THIS ARTICLE.

PROPOSED ARTICLE NINE. THE PROVISIONS OF THIS LETTER SHALL APPLY EQUALLY TO DEPENDENTS, RESIDENT IN THE ARAB REPUBLIC OF EGYPT, OF MEMBERS OF THE U.S.C.P. PROCEDURES FOR IMPLEMENTING THIS ARTICLE SHALL BE AGREED UPON BETWEEN THE DIRECTOR OF THE U.S.C.P. AND EGYPTIAN AUTHORITIES. END QUOTE

3. F.Y.I. (A) WE CANNOT ENTIRELY CLOSE THE JURISDICTIONAL GAP AS THE GOE WOULD LIKE TO DO (REF. A PARA 2). THERE IS NO WAY USG CAN EXERCISE CRIMINAL JURISDICTION OVER MEMBERS OF SFM IN EGYPT. MOREOVER, ALTHOUGH ANY U.S. COURT WOULD HAVE SUBJECT MATTER JURISDICTION OVER CIVIL WRONGS COMMITTED BY SFM MEMBERS, THE INJURED PARTY'S RIGHT OF RECOVERY WOULD PROBABLY BE OF ONLY THEORETICAL INTEREST TO HIM. THE BEST WE CAN DO IS TO TRY TO MAKE SURE THAT IN ALL CASES INJURIES WILL BE AT CONFIDENTIAL

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LEAST PARTIALLY COMPENSATED, AND LEAVE OPEN POSSIBILITY OF A POLITICAL DECISION BY USG, IN PARTICULARLY SENSITIVE CRIMINAL OR CIVIL CASES, TO WAIVE IMMUNITY AND LET GOE HAVE JURISDICTION.

(B) THE PROVISIONS OF U.S. LAW REFERRED TO IN PROPOSED ARTICLE 4(B) ARE 22 U.S.C. 2669 (B) AND 2669(F). 2669(B) GIVES THE SECRETARY DISCRETION, "FOR THE PURPOSE

OF PROMOTING AND MAINTAINING FRIENDLY RELATIONS WITH FOREIGN COUNTRIES", TO PAY "ANY MERITORIOUS CLAIM AGAINST THE UNITED STATES" FOR DAMAGES TO A FOREIGN COUNTRY'S NATIONALS. A SETTLEMENT UNDER THIS PROVISION MAY NOT EXCEED DOLS 15,000, AND IT ONLY COVERS CLAIMS ESPOUSED BY FOREIGN GOVERNMENT. 2669(F) GIVES THE SECRETARY AUTHORITY TO PAY TORT CLAIMS ARISING IN FOREIGN COUNTRIES IN CONNECTION WITH STATE DEPARTMENT OPERATIONS. THIS SECTION HAS A HIGHER SETTLEMENT LIMIT (UP TO DOLS 25,000

IN THE SECRETARY'S DISCRETION, NO LIMIT IF THE ATTORNEY GENERAL CONCURS), BUT THERE ARE SEVERAL DIFFICULT LEGAL POINTS ABOUT ITS APPLICATION TO SFM OPERATIONS AND WE MIGHT NOT BE ABLE TO INVOKE IT.

(C) FINALLY, THOUGH USG POSSESSES (AND HAS INVOKED) CONTRACTUAL RIGHT TO SYSTEMS TO OBTAIN THIRD PARTY LIABILITY INSURANCE FOR ALL SFM CONTRACT EMPLOYEES, USG, AS LEGAL MATTER, CANNOT REQUIRE USG PERSONNEL ASSIGNED TO SFM TO DO SO. ACCORDINGLY, OUR PORPOSED PARA 4 ABOVE ONLY ADVISES GOE OF FACT THAT ALL SFM PERSONNEL HAVE UNDERTAKEN TO OBTAIN ADEQUATE THIRD PARTY COVERAGE.END FYI

4. IN PRESENTING THIS PROPOSAL TO IBRASHI (OR HIS SUCCESSOR) YOU SHOULD NOTE:

---CIVIL JURISDICTION IN U.S. OF COURSE ALWAYS EXISTS, ALTHOUGH U.S. IS TOO FAR AWAY FOR THIS TO BE OF USE TO MOST INJURED PARTIES;

---ACCORDINGLY BEST SOLUTION IS TO DO ALL WE CAN TO INSURE INJURIES WILL NOT GO UNCOMPENSATED;

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---IN CASES SENSITIVE FOR GOE USG WILL CONSIDER A POLITICAL DECISION TO WAIVE IMMUNITY FROM EGYPTIAN JURISDICTION;

---(IF ASKED) THE LAWS REFERRED TO IN PROPOSED ARTICLE 4 (B) ALLOW SECRETARY TO PAY UP TO DOLS 15,000, WITH SUBSTANTIAL DISCRETION, FOR MERITORIOUS CLAIMS; MORE MAY BE PAID IN CERTAIN CASES, ALTHOUGH THIS IS LESS SURE;

---DEPENDENTS WILL BE TREATED AS U.S.C.P. MEMBERS FOR P AND I PURPOSES.

5. MINOR PROBLEM IS FACT THAT LAST SENTENCE OF PARA 1 OF GOE DRAFT (REF C) STATES NUMBER OF USCP MUST NOT EXCEED 200.IN FACT PRESENCE OF TDY CONSTRUCTION PERSONNEL

ON SITE WILL BULGE NUMBER OF PERSONNEL OVER 200 UNTIL MID-JULY AFTER WHICH PERMANENT CADRE WILL REMAIN APPROXIMATELY 170. TDY CONTRACTOR PERSONNEL WILL ENTER FROM ISRAELI OCCUPIED SIDE AND WILL NOT ENJOY P AND I OF SFM PERSONNEL. TO AVOID CONFLICT WITH GOE DRAFT WE SUGGEST THAT FIRST SENTENCE OF PARA 1 OF DRAFT STATE: "THE

GOVERNMENT OF THE UNITED STATES SHALL NOTIFY THE COMPETENT AUTHORITIES OF THE ARRIVAL AND THE FINAL DEPARTURE OF ALL U.S. CIVILIAN PERSONNEL ASSIGNED PURSUANT TO THE ABOVE PROPOSAL (HEREINAFTER REFERRED TO AS "U.S.C.P.") WITHIN AN APPROPRIATE PERIOD PRIOR TO SUCH ARRIVAL AND DEPARTURE." IN YOUR DISCUSSIONS WITH GOE REPS, REPORTED FOR NEGOTIATING RECORD, YOU SHOULD MAKE IT CLEAR THAT REFERENCE TO "U.S.C.P." DOES NOT ENCOMPASS TDY CONTRACTOR PERSONNEL.

6. WE HAVE NO OBJECTION TO METHOD OF EXCHANGE AND INTRODUCTORY LANGUAGE PROPOSED REF E, WHICH ARRIVED AFTER ABOVE PARAS TYPED. KISSINGER

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